

2006 WL 6347449 (Idaho Dist.) (Trial Pleading)
Idaho District Court.
Fourth Judicial District
Ada County

Reed TAYLOR, Dallan Taylor, and R. John Taylor, Plaintiffs,

v.

Thomas MAILE, IV and Colleen Maile, husband and wife, and Berkshire Investments, LLC, Defendants.

No. CV OC 0400473D.
January 18, 2006.

Amended Complaint

[Connie W. Taylor](#), Clark and Feeney, Attorneys for Plaintiffs, 1229 Main Street, P.O. Drawer 285, Lewiston, Idaho 83501, Telephone: (208) 743-9516, ISB No. 4837.

COME NOW the Plaintiffs by and through their undersigned counsel of record, Connie W. Taylor of the Law Offices of Clark and Feeney, and for a cause of action and claim for relief against the Defendants, complain, state, and allege as follows:

I. PARTIES

1.1 Reed and R. John Taylor are residents of Nez Perce County, Idaho; Dallan Taylor is a resident of Ada County Idaho. All of the plaintiffs are residual beneficiaries of the Theodore L. Johnson Trust. They bring this action on their own behalf and also as assignees of certain other beneficiaries or residual beneficiaries of said trust.

1.2 Thomas Maile, IV (herein after Thomas Maile) is engaged in the practice of law at 380 W. State Street, Eagle, Ada County, Idaho. Defendant Thomas Maile is a licensed real estate broker D/B/A Thomas Maile Real Estate Company. Thomas Maile and Colleen Maile are husband and wife and all acts complained of herein were for the benefit of the marital community. They were at all times relevant hereto believed to be residents of Ada County, Idaho.

1.3 The Defendant Berkshire Investments, LLC is an Idaho limited liability company which was formed by the Defendant Thomas G. Maile.

II. JURISDICTION AND VENUE

2.1 This court has jurisdiction over the person and subject matter of the above-captioned matter by virtue of the fact that all of the acts and/or omissions complained of occurred within Ada County, Idaho and relate to real property located in Ada County.

III. FACTUAL ALLEGATIONS

3.1. The Defendant Thomas Maile, acting in his capacity as an attorney with offices in Eagle, Idaho, represented Theodore Johnson on a variety of matters for a period of many years. The attorney client relationship continued until Mr. Johnson's death on September 14, 2002. After Mr. Johnson's death, the Defendant Thomas Maile continued to act as the attorney for the Theodore L. Johnson Trust and the Theodore L. Johnson Estate.

3.2. During the course of the attorney client relationship, Thomas Maile represented and advised Mr. Johnson in relation to the potential sale of 40 acres of property near Eagle, Idaho. Mr. Maile, as attorney for the Johnson Trust, rejected an offer to purchase the property for \$400,000, stating it was “extremely low” based on comparable sales in the area. Within approximately two months Thomas and Colleen Maile entered into an earnest money agreement to purchase the 40 acres for the price of \$400,000.00, on terms which were nearly identical to the prior offer which was rejected.

3.3 The Defendants Maile formed a limited liability company, Berkshire Investments, LLC, and assigned their rights under the earnest money agreement to Berkshire Investments, LLC, which subsequently purchased the property from the Johnson Trust.

3.4 Theodore Johnson died on September 14, 2002. The successor trustees of the Theodore Johnson Trust (Beth and Andy Rogers) closed the transaction selling the property to Berkshire Investments, LLC on September 16, 2002.

3.5 The Rogers had a conflict of interest with other beneficiaries, in that they were also beneficiaries of the Trust. Under the terms of the trust, the Rogers would receive their share immediately, as opposed to the majority of other beneficiaries who would either receive income only for their lives, or would receive nothing until the death of their mother.

3.6 Defendants acquired the Linder Road real property with knowledge of the Rogers' conflict of interest, and with knowledge that the Rogers had failed to carry out their fiduciary responsibility by:

3.6.1 Failing to carefully examining the fairness and propriety of the transaction before closing it.

3.6.2 Failing to obtain court approval prior to consummating the sale.

3.7 Beneficiaries demanded that Defendants restore the Linder Road property to the beneficiaries, but the Defendants have refused to do so.

IV. AIDING IN BREACH OF FIDUCIARY DUTY

4.1 The Defendants aided the trustees in disposing of trust property in violation of their fiduciary responsibilities and duty of loyalty, and received the trust property with knowledge of the same, including knowledge that the sale had not been approved by a court as required by [I.C. 68-108\(b\)](#).

4.2 Plaintiffs seek imposition of a constructive trust, and an order quieting title to the real property in the Theodore L. Johnson Revocable Trust, together with interest thereon from September 16, 2002.

4.3 In the alternative, Plaintiffs seek money damages for the difference between the amount paid and the fair market value of the property at the time of trial.

v.

The Defendants should take notice that the Plaintiffs may file a pretrial motion pursuant to statute to amend the complaint to include a prayer for punitive damages. The Defendants should conduct their trial preparation accordingly.

VI. ATTORNEY FEES

As a direct result of the Defendants' actions, the Plaintiffs have been required to institute and prosecute this action and have incurred costs and attorney fees. The Plaintiffs have employed the law firm of Clark and Feeney and have agreed to pay said firm a reasonable attorneys fee and are entitled to be reimbursed for said fees under the statutes and case law of the state of

daho, specifically [Idaho Code 12-120\(3\)](#), [12-121](#) and [12-123](#), as well as under the terms of the contract for purchase of the real property which is at issue in this matter.

WHEREFORE, Plaintiffs pray for relief and for judgment, order and decree of this court against Defendants as follows:

1. For imposition of a constructive trust;
2. For an order restoring the real property to the Trust and quieting title to the real property in the name of the Theodore L. Johnson Revocable Trust;
3. In the alternative, for an order awarding money damages for the difference between the amount Defendants paid and the fair market value of the property at the time of trial.
4. For pre and post judgment interest at the statutory rate until fully paid;
5. For all costs of this action;
6. For attorneys fees incurred by the plaintiffs in prosecuting this action under [Idaho Code 12-120](#), [12-121](#), [12-123](#);
7. For attorneys fees under the Earnest Money Offer and Acceptance contract dated July 27, 2002;
8. For such other and further relief as the court deems just and equitable.

DATED this *18th* day of January, 2006.

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